

were intended to apply only to airplanes not authorized by the FAA to conduct operations in air transportation as a common carrier, while the current regulations at 11 CFR 100.52 would apply to all airplanes operated pursuant to other certifications that do permit carriage of passengers for compensation. The final rules in § 100.93(a)(1)(i) differ from the proposed rules by including a specific reference to the operating authority for the planes. Most operators offering passenger service for compensation or hire, such as air carriers or commercial operators, must receive special certification under 14 CFR parts 121, 129, or 135 in order to hold out the use of the airplane to the general public. A usual and normal charge will ordinarily be apparent for the use of these airplanes, so there is no need to apply new § 100.93 to the use of these airplanes. Rather, section 100.93 applies to private jets and other airplanes that are not normally held out to the public, such as airplanes operated exclusively under 14 CFR parts 91 or 125.<sup>3</sup> The pilot of an airplane is usually aware of the operating authority in order to comply with the safety requirements and other duties required for that each different type of operating certification. The status of the airplane can be quickly determined by reference to the operations specifications for that airplane, which will identify the rule part that governs the operator.

New section 100.93 applies to airplanes owned by any “person,” as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government. This is intended to remedy whatever confusion might have previously resulted from the fact that previous 11 CFR 114.9(e) covered only corporate and labor organization aircraft.

*(ii) Paragraph (a)(1)(ii)—Other means of transportation.*

Because most conveyances other than airplanes are not operated subject to FAA authority, new § 100.93 applies to “other means of transportation not operated for commercial passenger service.” 11 CFR 100.93(a)(1). The Commission believes that a determination of the normal use of a car, bus, or similar conveyances, while requiring some examination of its normal operation, does not raise the unique complexities presented by the ownership structures, expenses, and uses of airplanes. Without any external regulatory structure to parallel the FAA

regulations of airplanes, the Commission concludes that this approach provides the most accurate means of identifying when the usual and normal charge for a conveyance can be readily ascertained for compliance with 11 CFR 100.52(d), and when it cannot.

*(iii) Paragraph (a)(1)(iii)—Government conveyances.*

Because the scope of the final rules is tied to FAA certification, the Commission is adding new paragraph (a)(1)(iii) to clarify that election-related travel aboard a Federal, State, or local government conveyance is within the scope of new 11 CFR 100.93.

**2. Paragraph (a)(2) Means of Transportation Outside the Scope of 11 CFR 100.93**

New paragraph (a)(2) of section 100.93 provides that 11 CFR 100.52(a) and (d) continue to apply to travel by means of transportation operated for commercial passenger service. However, for campaign travelers using means of transportation not operated for commercial passenger service where the normal and usual charge may not be obvious, as opposed to commercial airlines or charter or taxi services normally offered for a fee, § 100.93 establishes a substitute for the normal and usual rate for that means of travel.

**3. Paragraph (a)(3) Definitions**

*(i) Paragraph (a)(3)(i)—Campaign traveler.*

Paragraph (a)(3) defines several terms used in new section 100.93. In the NPRM, the Commission proposed defining the term “campaign traveler” to provide a succinct term covering the candidate, candidate’s agent, or other individual traveling on behalf of a candidate or a candidate’s authorized committee. One commenter suggested that 11 CFR 100.93 be expanded to include payment for travel by persons traveling on behalf of political parties and other political committees, essentially inviting the Commission to expand the definition of “campaign traveler” to these other travelers. The Commission is implementing the suggestion to provide guidance to these other travelers who, if not permitted to rely on this valuation of travel as set forth in this new section, would be left without specific guidance as to the proper rate of reimbursement. By establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.

The final rules at 11 CFR 100.93(a)(3)(i)(A) define a new term, “campaign traveler,” to include any individual traveling in connection with a Federal election on behalf of a candidate, a political party committee, or any other political committee. In addition, because the news media sometimes accompany Federal candidates on government conveyances and other means of transportation at the candidate’s discretion, the final rules address the proper amount of payment for their travel. Section 100.93(a)(3)(i)(B) specifies that members of the news media are included in the definition of “campaign traveler” when traveling with a candidate. This definition applies whether or not such candidates are running for President or Vice President or are receiving public funding. It is consistent with the provisions in former 11 CFR 9004.7(b)(5)(i)(C) and 9034.7(b)(5)(i)(C) that required the inclusion of members of the media in calculating the cost of comparable transportation. Once a service provider makes an airplane or other conveyance available for the use of a candidate and the accompanying news media, the service provider must be reimbursed for the value of that travel in order to avoid a contribution from the service provider to the candidate’s campaign. Therefore, either the candidate’s authorized committee, other political committee responsible for payment of travel expenses for the candidate, or the media travelers, must pay the travel costs, at the same rate, for the members of the media who accompany the candidate(s). See 11 CFR 100.93(b), discussed below. The news media may elect to pay the service provider directly, or to reimburse the political committee in accordance with this section and 11 CFR 9004.6 and 9034.6.

*(ii) Paragraph (a)(3)(ii)—Service provider.*

Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a person providing transportation to a campaign traveler may be either the owner of the conveyance, or may be a different person who is leasing the conveyance from the owner and making it available for the campaign traveler’s use. The NPRM proposed to define “service provider” as the owner or lessee of an airplane or other conveyance who uses the airplane or other conveyance to provide transportation to a campaign traveler. One commenter expressed concern that this definition would not allow sufficient flexibility for aircraft owners and lessees to provide

<sup>3</sup> Aircraft operating pursuant to 14 CFR parts 91 or 125 are not permitted to operate as common carriers.